Date: 20080929

Docket: IMM-4061-08

Citation: 2008 FC 1089

Ottawa, Ontario, September 29, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

GNALEN CAMARA

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
and
MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant has not demonstrated that there is a serious issue to be tried by this Court in her main proceeding against the decision rejecting the application for a pre-removal risk assessment (PRRA).

[2] It is important to note that the applicant reiterated the same facts and risks in her PRRA application as those submitted to, and assessed by, the Refugee Protection Division (RPD), which considered them **not credible.**

[3] It is settled law that the PRRA is not an appeal of the RPD decision and that it is not the role of the PRRA officer to revise the RPD's findings of fact and credibility.

[4] Thus, in this case, the officer was not entitled to reassess the applicant's risk. His role was limited to reviewing the evidence that arose after the RPD rejected the application, as provided in paragraph 113(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

[5] **The applicant did not present any new evidence.** Accordingly, she cannot object to the PRRA officer's risk analysis when she herself failed to submit new evidence in her PRRA application.

II. Legal proceeding

[6] This is a motion for a stay of enforcement of the applicant's removal order, scheduled for October 7, 2008, to Guinea.

[7] The stay motion is accompanied by an application for leave and judicial review (ALJR) of the decision dated August 5, 2008, which rejected the applicant's PRRA application.

III. Facts

[8] The applicant, Ms. Gnalen Camara, is a citizen of Guinea and has been married to Mr. Aboubacar Cissé, a Canadian citizen, since 2004.

[9] Ms. Camara was admitted to Canada from the United States by fraudulently presenting an American residency card that belonged to a friend. She arrived in Canada from the United States after the Canadian visa office in Paris twice refused to issue her a temporary resident visa. Since her arrival in Canada, Ms. Camara has been living with her husband, who is a Canadian citizen.

[10] On June 8, 2006, Ms. Camara was summoned to the office of the Canada Border Services Agency (CBSA). This meeting was called following a postal seizure on May 9, 2006, in which a Guinean passport and other documents issued in Ms. Camara's name were found.

[11] After this meeting, Ms. Camara announced that she intended to claim refugee protection in Canada based on the risk of a forced marriage that her father in Guinea wanted to impose on her.

[12] On April 26, 2007, the hearing of Ms. Camara's refugee claim took place before the RPD. On May 16, 2007, the RPD denied Ms. Camara's refugee claim owing to her lack of credibility. The RPD determined that it was "dealing with a story that was invented to bolster a claim for refugee protection in order to compensate for the failure of an attempted sponsorship." The Court dismissed the ALJR of the negative RPD decision on September 5, 2007.

[13] On July 9, 2007, Ms. Camara applied for permanent residence in the Spouse or Common-law Partner in Canada class.

[14] On November 21, 2007, notice of the PRRA was sent to Ms. Camara. On December 5, 2007, the Citizenship and Immigration Canada (CIC) office in Montréal received Ms. Camara's PRRA application. On December 24, 2007, CIC received Ms. Camara's submissions with no supporting evidence.

[15] On May 23, 2008, the application for permanent residence in the Spouse or Common-law Partner in Canada class was denied on the ground that the sponsor did not meet the requirements of section 133 of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227, since he was in receipt of social assistance at the time the application was made.

[16] On June 8, 2008, Ms. Camara submitted a second application for permanent residence in the Spouse or Common-law Partner in Canada class. This second application is still under review but does not grant a stay of Ms. Camara's removal from Canada because she submitted it after the PRRA notice was issued.

IV. Analysis

[17] To obtain a stay of her removal order, Ms. Camara has to demonstrate that she meets the jurisprudential tests laid down by the Federal Court of Appeal in *Toth v. Canada (Minister of Citizenship and Immigration)*, [1988] F.C.J. No. 587 (QL), 86 N.R. 302 (F.C.A.):

(1) there is a serious issue to be tried;
(2) the applicant will suffer irreparable harm if no order is granted; and
(3) the balance of convenience favours granting the stay.

[18] The three tests must be met in order for the Court to grant the stay. If one of them is not met, the Court cannot grant the stay.

[19] In this case, Ms. Camara does not satisfy any of the tests.

(1) Serious issue

[20] Ms. Camara failed to demonstrate that there is a serious issue to be tried by this Court in her main proceeding against the PRRA decision.

[21] First, Ms. Camara alleges that the officer did not carefully analyze her risk and that his rejection is not supported by the evidence.

[22] It is important to note that Ms. Camara reiterated the same facts and risks in her PRRA application as those submitted to the RPD, which assessed them and considered them **not credible.**

[23] It is settled law that the PRRA is not an appeal of the RPD decision and that it is not the role of the PRRA officer to revise the RPD's findings of fact and credibility.

[24] In *Herrada v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1004, 154 A.C.W.S. (3d) 676, this Court clearly stated that the officer was not entitled to reassess the applicant's credibility or to set aside the RPD's credibility findings:

> [30] The PRRA officer nevertheless pointed out that the RPD had determined that these allegations were not credible. Further, Mr. Salomon Herrada and his family tried to dispute these findings before this Court, but this Court refused to intervene.
>
> [31] Mr. Salomon Herrada and his family seem to be of the view that by adding documents to the record at the stage of their PRRA application, the RPD's findings will be reversed or forgotten. However, the officer deciding a PRRA application is not sitting on appeal or review of the RPD's decision (*Hussain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 751 (F.C.T.D.) (QL), at paragraph 12; *Ahmed c. Canada (Minister of Citizenship and Immigration)*, [2001] 1 C.F. 483, at paragraph 27):
>
> > In my opinion, the PCDO process is an administrative one. As such, the officer's role is limited to a review of the evidence in the record, including any new documents and submissions presented by the applicants. Thus, it is not open for the officer to conduct a new assessment of an applicant's credibility and to reverse the credibility findings of the Refugee Division. Just as Nadon J. stated in *Hussain v. Canada (Minister of Citizenship and Immigration)*, that an immigration officer does not sit in appeal or review of the Refugee Board's decision in a humanitarian and compassionate application, where its purpose is not to reargue the facts which were originally before the Refugee Board, I am of the view that the same applies to a PDRCC application.
> > (*Ahmed*, above)
>
> [32] Accordingly, when deciding the PRRA application, the officer was not entitled to proceed to reassess the credibility of Mr. Salomon Herrada and his family or to set aside the RPD's credibility findings. More specifically, the PRRA officer could not rely on the fact that Mr. Salomon Herrada and his family had been targeted by the Shining Path, given the RPD's findings on that issue. (Emphasis added.)

(Also, to the same effect: *Yousef v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 864, 296 F.T.R. 182)

[25] Thus, in this case, the officer was not entitled to reassess the risk. His role was limited to reviewing the evidence that arose after the RPD rejected the application, as provided in paragraph 113(*a*) of the IRPA.

[26] **Ms. Camara did not present any new evidence.** Accordingly, she cannot object to the PRRA officer's risk analysis when she herself failed to submit new evidence in her PRRA application.

[27] Second, Ms. Camara claims that the officer failed to consider the hardships the couple would face if she were removed from Canada.

[28] It is clear that the officer did not have to consider this factor. Rather, it should be considered in an application based on humanitarian and compassionate grounds. We note that Ms. Camara has not filed such an application.

[29] As this Court pointed out in *Herrada*, above, at paragraph 27: "The only objective of the PRRA program is to assess the risks that a person could face if they were to be removed to their native country, in light of new facts arising after the RPD's decision on the refugee claim. . . . "

[30] Third, Ms. Camara is disputing the removal officer's decision. However, it is the PRRA decision that is the basis of the ALJR underlying this motion.

[31] Since no relief is sought in this Court against the removal officer's decision, Ms. Camara's allegations are irrelevant, and the Court cannot consider them.

[32] In this case, Ms. Camara has not discharged the burden of demonstrating that there is a serious issue to be tried on her ALJR of the PRRA decision. This, in itself, is enough to end the analysis required under *Toth*.

(2) Irreparable harm

[33] It is important to note that this Court defined irreparable harm in *Kerrutt v. Canada (Minister of Employment and Immigration)* (1992), 53 F.T.R. 93, [1992] F.C.J. No. 237 (QL), as **the return of a person to a country where his or her safety or life is in jeopardy**.

[34] Ms. Camara is not alleging any personal risk should she return to Guinea.

[35] Rather, Ms. Camara claims that she would suffer irreparable harm because she would be separated from her husband with whom she shares her life and she would lose her job and the assets acquired in Canada.

[36] As for Ms. Camara's separation from her husband, it is settled law that this, in itself, is not irreparable harm:

> [TRANSLATION]
> With respect to the applicant's separation from his wife, it is well established in the jurisprudence that such a separation is not, in itself, irreparable harm (see, for example, *Celis v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1679 (FCT) (QL), 2002 FCT 1231; *Parsons v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1161 (FC) (QL), 2003 FC 913; *Damiye v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 70 (FCT) (QL); *Melo v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 403 (FCT) (QL); *Selliah v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1200 (FCA) (QL), 2004 FCA 261. (Emphasis added.)

(*Samee v. M.C.I. and M.P.S.E.P.*, IMM-3616-07, September 25, 2007, p. 2 (Justice Yvon Pinard))

[37] Ms. Camara's loss of employment and assets acquired in Canada is not an unusual consequence of removal that amounts to irreparable harm:

> [TRANSLATION]
> **WHEREAS** the harm that he would suffer because of separation from his wife is certainly a hardship, as is the eventual loss of his employment, it is not an unusual consequence of removal that amounts to irreparable harm. (Emphasis added.)

(*Concepcion v. M.C.I. and M.P.S.E.P.*, IMM-3085-06, June 15, 2006, p. 3 (Justice Pierre Blais))

> [13] It is well established that employment loss is one of the unfortunate side effects of removal but does not amount to irreparable harm. (Emphasis added.)

(*David v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1486, 154 A.C.W.S. (3d) 437)

[38] Clearly, Ms. Camara's allegations do not constitute irreparable harm as defined repeatedly in this Court's jurisprudence:

> [21] . . . But if the phrase irreparable harm is to retain any meaning at all, it must refer to some prejudice beyond that which is inherent in the notion of deportation

> itself. To be deported is to lose your job, to be separated from familiar faces and places. It is accompanied by enforced separation and heartbreak. . . . (Emphasis added.)

(*Melo v. Canada (Minister of Citizenship and Immigration)* (2000), 188 F.T.R. 39, [2000] F.C.J. 403 (QL))

> [13] The removal of persons who have remained in Canada without status will always disrupt the lives that they have succeeded in building here. This is likely to be particularly true of young children who have no memory of the country that they left. Nonetheless, the kinds of hardship typically occasioned by removal cannot, in my view, constitute irreparable harm for the purpose of the *Toth* rule, otherwise stays would have to be granted in most cases, provided only that there is a serious issue to be tried . . . (Emphasis added.)

(*Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261, 132 A.C.W.S. (3d) 547)

[39] In light of the applicable jurisprudence, Ms. Camara's allegations are not sufficient to establish that her return to Guinea would cause her irreparable harm, and since the three tests laid down in *Toth* are cumulative, this motion should be dismissed.

(3) Balance of convenience

[40] The balance of convenience favours the respondents, who have an interest in having the removal order enforced on the scheduled date (*Mobley v. M.C.I.*, IMM-106-95, January 18, 1995, (F.C.)).

[41] In fact, subsection 48(2) of the IRPA provides that a removal order must be enforced as soon as is reasonably practicable.

[42] The Federal Court of Appeal discussed the issue of the balance of convenience on stay motions and the public interest that must be considered:

> [21] Counsel says that since the appellants have no criminal record, are not security concerns, and are financially established and socially integrated in Canada, the balance of convenience favours maintaining the *status quo* until their appeal is decided.
>
> [22] I do not agree. They have had three negative administrative decisions, which have all been upheld by the Federal Court. It is nearly four years since they first arrived here. In my view, the balance of convenience does not favour delaying further the discharge of either their duty, as persons subject to an enforceable removal order, to leave Canada immediately, or the Minister's duty to remove them as soon as reasonably practicable: IRPA, subsection 48(2). This is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control. (Emphasis added.)

(*Selliah*, above)

[43] The respondents' interest in enforcing the removal order promptly takes precedence over the hardship that Ms. Camara may suffer.

[44] Thus, the balance of convenience favours the respondents.

V. Conclusion

[45] In light of all the foregoing, Ms. Camara has not satisfied the jurisprudential requirements for obtaining a judicial stay.

JUDGMENT

THE COURT ORDERS that the applicant's motion for a stay is dismissed.

"Michel M.J. Shore"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4061-08
STYLE OF CAUSE:	GNALEN CAMARA v. MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS and MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 22, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	MR. JUSTICE SHORE
DATED:	September 29, 2008

APPEARANCES:

Sangaré Salif	FOR THE APPLICANT
Caroline Doyon	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

SANGARÉ SALIF, lawyer Montréal, Quebec	FOR THE APPLICANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENTS